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4 **IN THE UNITED STATES DISTRICT COURT FOR THE**
5 **EASTERN DISTRICT OF CALIFORNIA**
6

7 **JAY GILL,**

8 **Plaintiff,**

9 **v.**

10 **DAVID SIMPSON, JASON CHRISCO,**
11 **CLAYTON LOGOMASINI, GLOBAL**
12 **SERVICES, INC., a Missouri**
13 **corporation, NARVISS, LLC, a Missouri**
14 **limited liability company d/b/a Naviss**
15 **Direct, and DOES 1 through 80,**
16 **inclusive,**

17 **Defendants.**

1:12-CV-1011 AWI GSA

ORDER VACATING AUGUST
29, 2012 ORDER

(Doc. Nos. 25, 28)

18 On August 21, 2012, Plaintiff filed a motion to dismiss Defendant Clayton Logomasini
19 pursuant to Rule 41(a)(2). See Doc. No. 25. On August 28, 2012, the Court signed an order
20 dismissing Logomasini. See Doc. No. 28. That order dismissed Logomasini pursuant to Rule
21 41(a)(1)(A)(ii), but that order was inadvertently signed because there was not in fact a stipulation
22 signed by the parties. Therefore, the Court will vacate the August 29, 2012, order.

23 Nevertheless, at the time Plaintiff filed the motion to dismiss Logomasini, no answers or
24 motions for summary judgment had been filed. Instead of a Rule 41(a)(2) motion, the Court will
25 construe Plaintiff's motion for dismissal as brought under Rule 41(a)(1)(A)(i).

26 Rule 41(a)(1), in relevant part, reads:

27 (A) . . . the plaintiff may dismiss an action without a court order by filing: (i) a
28 notice of dismissal before the opposing party serves either an answer or a motion
for summary judgment; or (ii) a stipulation of dismissal signed by all parties who
have appeared. . . . (B) Unless the notice or stipulation states otherwise, the
dismissal is without prejudice.

In *Wilson v. City of San Jose*, the Ninth Circuit explained:

1 Under Rule 41(a)(1), a plaintiff has an absolute right to voluntarily dismiss his
2 action prior to service by the defendant of an answer or a motion for summary
3 judgment. Concha v. London, 62 F.3d 1493, 1506 (9th Cir. 1995) (citing
4 Hamilton v. Shearson-Lehman American Express, 813 F.2d 1532, 1534 (9th Cir.
5 1987)). A plaintiff may dismiss his action so long as the plaintiff files a notice of
6 dismissal prior to the defendant's service of an answer or motion for summary
7 judgment. The dismissal is effective on filing and no court order is required. Id.
8 The plaintiff may dismiss some or all of the defendants . . . through a Rule
9 41(a)(1) notice. Id.; Pedrina v. Chun, 987 F.2d 608, 609-10 (9th Cir. 1993). The
10 filing of a notice of voluntary dismissal with the court automatically terminates
11 the action as to the defendants who are the subjects of the notice. Concha, 62
12 F.2d at 1506. Unless otherwise stated, the dismissal is ordinarily without
13 prejudice to the plaintiff's right to commence another action for the same cause
14 against the same defendants. Id. (citing McKenzie v. Davenport-Harris Funeral
15 Home, 834 F.2d 930, 934-35 (9th Cir. 1987)). Such a dismissal leaves the parties
16 as though no action had been brought. Id.

17 Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997).

18 Again, no answers to Plaintiff's complaint and no motions for summary judgment have
19 been filed in this case and it appears that no such answers or summary judgment motions have
20 been served. Because Plaintiff has exercised his right to voluntarily dismiss his complaint under
21 Rule 41(a)(1) as against Defendant Logomasini only, Logomasini is no longer a party to this
22 case. See Wilson, 111 F.3d at 692. The Court will dismiss Logomasini pursuant to Rule
23 41(a)(1)(A)(i).

24 Accordingly, IT IS HEREBY ORDERED that:

- 25 1. The August 29, 2012, order (Doc. No. 28) is VACATED;
- 26 2. Plaintiff's motion to dismiss (Doc. No. 25) is GRANTED as a Rule 41(a)(1) dismissal;
27 and
- 28 3. Defendant Clayton Logomasini is dismissed from this case without prejudice.

IT IS SO ORDERED.

Dated: August 29, 2012


CHIEF UNITED STATES DISTRICT JUDGE